

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TRIA BEAUTY, INC.,

No. C 10-5030 RS

Plaintiff,

**ORDER DENYING MOTION TO
STRIKE**

v.

RADIANCY, INC.,

Defendant.

The filing by one party of multiple motions for summary judgment, sequentially or otherwise, is strongly discouraged, if not flatly prohibited. Here, where one of Radiancy's motions seeks judgment on its affirmative claims and the other is defensive, some of the concerns raised by multiple motions are not implicated. Radiancy has also shown that it was not possible to file its second motion prior to receiving reports from Tria's expert witnesses. The parties vigorously dispute the degree to which there were unreasonable delays in the discovery process and which side is responsible for any such delay. Even assuming significant blame could properly be assigned to Radiancy, there is no indication of conduct so egregious that it would warrant penalizing Radiancy by denying it the opportunity to have the merits of its second summary judgment motion heard.

Radiancy's reference at the Case Management Conference to its desire to file a second summary judgment motion falls somewhat short of an appropriately supported request for modification of the scheduling order. Conversely, however, relatively informal and economical

1 means for addressing scheduling issues should be encouraged where possible. Radiancy's
2 subjective belief that it had requested, and obtained, leave to file its second motion for summary
3 judgment is not wholly unreasonable.

4 Moreover, the touchstone in any matter such as this is prejudice. In light of the rescheduling
5 of the hearing date, there simply is no undue prejudice to Tria in being required to respond to
6 Radiancy's second motion on the merits. If, as Tria contends (but Radiancy denies), the motion
7 calls for an evaluation of the credibility of Tria's witnesses, it will be denied. Accordingly, Tria's
8 motion to strike is denied. As previously ordered, Tria shall file its opposition to the second
9 summary judgment motion on or before May 24, 2012, with any reply filed within one week
10 thereafter.

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12 IT IS SO ORDERED.

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14 Dated: May 9, 2012

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RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE